# In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 1019

ROBERT EUGENE FRANKLIN, PETITIONER

*v.*

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT*

## MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Middle District of Georgia, petitioner was convicted of having committed perjury while testifying as a witness in a federal criminal prosecution in violation of 18 U.S.C. 1621. On October 28, 1966, he was sentenced to imprisonment for a term of three years. The court of appeals affirmed (Pet. App. B).

Petitioner's sole contention is that the district court committed reversible error when, in instructing the jury, it referred to the Bible and the Koran in discussing the historical background of oathtaking.



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In its charge to the jury, the court emphasized that the sole issue for the jury's determination was whether petitioner had testified falsely, knowing his testimony to be false (R. 239–240; see R. 260). It read the terms of the statute, 18 U.S.C. 1621 (R. 240–241), and observed that the importance of the case lay in the effect of perjury generally upon the administration of justice in both civil and criminal proceedings (R. 241). The court noted the historical background of oathtaking, citing examples of oaths in the Bible and describing oathtaking procedures in the Orient and in Mohammedan countries (R. 242–247) in order to show that "it is not only true in this Country, but it is true generally throughout the civilized world that witnesses are required to tell the truth and to take an oath to do so because it is realized the importance of witnesses' telling the truth" (R. 248). The court stressed that, in referring to this background, it was not expressing any opinion as to what had or had not been proven in this case as to the guilt or innocence of petitioner, but that it wished the jury "to understand the reason for the existence of this statute" (R. 241–242). Thereafter, the court instructed on the elements of the offense and other pertinent matters.

It is plain that the court's instructions, read as a whole, contained no prejudicial error. The matter of which petitioner complains was designed to impress the jury with the importance of sworn testimony and the corresponding seriousness of perjury. The court discussed oathtaking and perjury in the abstract, and

emphasized that it was expressing no opinion as to whether perjury had been proved by the evidence presented in this case. This portion of the charge simply served as a means of instilling in the jury an appreciation of the purpose of the criminal statute which petitioner was charged with violating.

It is respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
*Solicitor General.*

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